IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14168 of 2004
with
CIVIL APPLICATION No.1962 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRABHUDAS HARILAL TANNA & 18 - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR IS SUPEHIA for Petitioner(s) : 1 - 19.
MR DIPAN DESAI, AGP for Respondent(s) : 1 - 2.
RULE SERVED for Respondent(s) : 1 - 2.
NOTICE SERVED for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 15/02/2006

ORAL JUDGMENT

1.When the Civil Application is taken up for hearing, with the consent of the learned Counsel for both the

sides, the main Special Civil Application itself is taken up for final hearing today.

2. The petitioners have preferred the petition for challenging the circular dated 17.7.2004, whereby the clarification is made for entitlement of the promotion by the work-charge and work-assistant. The petitioners have also challenged the order dated 21.8.2004 based on the aforesaid circular of the Government dated 17.7.2004 and consequently the orders of promotion are cancelled.

3. It appears that when the petition was heard for the first time on 26.10.2004, this Court had passed the following order:

> *"Notice returnable on 30th November, 2004.*
>
> *Till then, the respondents shall not make recovery of any pay or difference of salaries paid to the petitioners as Work Assistants.*
>
> *Since the petitioners had not worked as Workcharge Clerks at the site but had worked as Clerks in the Offices, the respondents shall work out whether the petitioners would have been promoted as Senior Clerks and would have got the benefits of higher grade pay scale after completion*

of 9 / 18 years as Clerks or 9 years as Senior Clerks. The calculation in this behalf shall be placed on the record of these proceedings before the returnable date.

Reliance placed by learned counsel Mr.Supehia on the order in Special Civil Application No.11403 of 2004, is prima facie misconceived because in the said petitions covered by the order dated 9.9.2004, the petitioners were appointed as Karkoons or were required to render services as Karkoons and, therefore, they were promoted as Work Assistants. As per the Circular dated 17th July, 2004, there are two separate promotional avenues. Workcharge Karkoons working at the site are eligible for promotion tot he posts of Work Assistants and Workcharge Clerks are eligible for promotion to the posts of Senior Clerk. Hence, ad-interim orders passed in Special Civil Application No.11403 of 2004 and similar matters granting ad-interim stay against reversion cannot prima facie be invoked by the present petitioners."

4.Thereafter the petition is admitted and the ad-interim relief granted earlier is continued.

5.Pending the petition, as the reversion was not stayed by this Court, on 31.3.2006, the orders are passed by the Executive Engineer, reverting the petitioners and the consequence would be the recovery may be affected.

6.Upon hearing Mr.Supehia, learned Counsel appearing for the petitioner and Mr.Desai, learned AGP, it appears that it is an admitted position that the impugned orders in the main Special Civil Application dated 21.8.2004 was passed without giving opportunity of hearing to the petitioners. So far as the circular dated 17.7.2004 is concerned, the question of hearing may not arise, but it will be for the Authority to examine as to whether such circular will apply to the facts of the present case and, if yes, whether it will have prospective effect or would adversely affect the rights already conferred on the basis of the position prevailing prior to the issuance of the circular. In any case, had the opportunity of hearing been given to the petitioners, the matter could have been considered by the Authority before passing the order dated 21.8.2004.

7.Under the above circumstances, as the impugned order dated 21.8.2004 was passed without giving opportunity of hearing, the matter can be relegated to the

concerned Authority for giving opportunity of hearing to the petitioners and thereafter to pass a fresh order. Since the subsequent order dated 31.1.2006 is passed based on the order dated 21.8.2004, while considering the matter afresh, it would be required for the Authority to give final effect on the aspects of withdrawal of the promotion and/or reversion, as the case may be. However, till the aforesaid exercise is undertaken, as earlier only recovery was stayed and the reversion was not stayed, it would be just and proper to continue the stay against the past recovery, may be on account of the order dated 21.8.2004 or on account of the order dated 31.1.2006 and the reversion, if any, is to be made in pursuance of the order dated 31.1.2006, the same may continue subject to the final order, which may be passed by the Authority afresh after giving opportunity of hearing to the petitioners as indicated hereinabove.

8. In view of the above, I find that the following directions shall meet with the ends of justice:

(i) Respondent No.2, Superintending Engineer shall give opportunity of hearing to the petitioners on the aspects of withdrawal of the promotion vide order dated 21.8.2004 and also on

the aspects of reversion vide order dated 31.1.2006 and shall pass a fresh order in accordance with law on both the aspects, as early as possible, preferably within a period of four months from the date of receipt of the order of this Court.

(ii) Until the aforesaid exercise is undertaken and the fresh orders are passed, the recovery in pursuance of the order dated 21.8.2004 and the order dated 31.1.2006, if any, shall remain stayed and after passing of the fresh order, both the orders shall not survive.

9.Rule partly made absolute. Considering the facts and circumstances, there shall be no order as to costs.

10.In view of the order passed in the main SCA, the Civil Application is also disposed of accordingly.

15.2.2006 **(Jayant Patel, J.)**

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